

November 14, 2008

Kenneth Mollicone
281 Whetstone Hill Road
Somerset, Massachusetts 02726

Re: Tiverton Zoning Board Relief; Map 2-10, Block/Plat 113, Card/Lot 87

Dear Mr. Mollicone:

The following is the decision on your Petition heard by the Zoning Board of Review (the "Board") on November 5, 2008 for a request for a variance from Article V, Section 6 and Article IX, Section 7 of the Tiverton Zoning Ordinance (the "Zoning Ordinance") to establish a rural residential subdivision leaving proposed lots 2, 3, 10 and 12 on the subdivision plan with less than required rear yard setback on property located on the west side of North Brayton Road, Tiverton, Rhode Island, at Map 2-10, Block/Plat 113, Card/Lot 87 (the "Premises") located in an R60 zoning district.

After the testimony was completed at the public hearing for which due notice was given and a record kept, and after having viewed the premises and the surrounding area, the Board, taking into consideration its knowledge and expertise and all of the testimony and evidence entered into the record at the public hearing, makes the following findings:

1. That the Premises contains approximately 30 acres of land area, more or less, and is zoned R60.
2. That the Premises is a large, awkwardly shaped lot that cannot be subdivided into fully conforming lots even though sufficient lot area exists.
3. The petitioner testified that he wished to subdivide the Premises into twelve lots, four of which could not meet the required rear yard setback building envelopes required in an R60 zoning district. The proposal requires a dimensional variance from Article V, Section 1 of the Zoning Ordinance leaving proposed lots 2, 3, 10 and 12 on the subdivision plan with less than required rear yard setback.
4. The petitioner also testified that the proposal would be in keeping with the development in the surrounding area, would not negatively impact any nearby property owners and was the least relief necessary.
5. No objections were raised to the proposal. A letter of no objection was presented from an adjoining neighbor by the petitioners.
6. The petitioner obtained a conditional master plan approval from the Planning Board to proceed with the proposed subdivision as designed.
7. The Board concurred with the factual statements and opinions of the petitioners, whose information, analysis and conclusions were found credible and are made a part of the record. No objections were presented by any abutters.

Based on the foregoing and after deliberations on the application, the Board voted unanimously to grant the application for the variance, as follows:

- a. Special conditions and circumstances exist which are special and peculiar to the land or structure involved, and which are not applicable to other lands or structures in the same zoning district, and are not due to a physical or economic disability of the petitioner.

- b. Issuance of the requested relief will not be contrary to the public interest, and that, owing to special or peculiar site or structural conditions, literal enforcement of the provisions of this ordinance would result in an unnecessary hardship on the petitioner.
- c. The unnecessary hardship, which the petitioner seeks to avoid, has not been imposed by any prior action of the petitioners and is not based purely for monetary gain or loss.
- d. The granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based.
- e. Relief from the provisions of this ordinance is the least relief necessary to remove the unnecessary hardship.
- f. That nonconforming use of neighboring lands, structures or buildings in the same district, and permitted use of lands, structures or buildings in an adjacent district did not form the grounds for the application of this variance request.
- g. That the hardship that will be suffered by the petitioner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience.

This petition is granted by the Board with the following stipulations and conditions:

- 1. That this decision must be recorded in the Land Evidence Records in the Town Clerk's Office before a building permit/certificate of occupancy is issued. (Please note that the appeal period (20 days) begins when said decision is recorded and posted with the Town Clerk's Office).
- 2. That the relief is limited to the plans and representations made by the petitioners to the Board. Changes to the approved plan may be made without approval of the Zoning Board of Review if needed to comply with either the building or fire codes.
- 3. A no cut buffer of ten (10) feet shall be maintained along the property line of all existing homes abutting the Premises.
- 3. This approval shall expire one year from the date of granting of such by the board unless the applicant exercises the permission granted or receives a building permit to do so and commences construction and diligently prosecutes the construction until completed. The board may, upon application thereof, for cause shown and without a public hearing, grant an extension, provided that not more than one such extension for a period of six months be granted.

Present this letter to the Building Inspector when applying for the necessary permits.

Very truly yours,

David Collins, Chairman
Tiverton Zoning Board of Review